

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Jose Gallimort,
5 Petitioner

6 v.

7 Brian Williams, et al.,
8 Respondents

Case No.: 2:18-cv-00127-JAD-GWF

Order Dismissing Petition

[ECF No. 2]

9 Pro se petitioner Jose Gallimort is serving time at the High Desert State Prison for first-
10 degree kidnapping and battery with the use of a deadly weapon.¹ He petitions for a writ of
11 habeas corpus under 28 U.S.C. § 2254, arguing that his Fourth and Fourteenth Amendment rights
12 were violated 20 years ago.² It appears that his claims are time barred, so I ordered Gallimort to
13 show cause why they aren't or why he is entitled to equitable tolling.³

14 Gallimort responded that he is entitled to equitable tolling because he was diligently
15 pursuing his rights but was hindered by a language barrier.⁴ In an effort to show his diligence in
16 his pursuit for habeas relief, Gallimort represents that he has filed five habeas petitions "along
17 with many of the corresponding appeals and related motions."⁵ But a petitioner may not file a
18 second or successive habeas petition without "an order authorizing the district court to consider
19 the application."⁶ Even a petition that has been dismissed with prejudice as untimely or because
20 of procedural default constitutes a disposition on the merits and renders a subsequent petition
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22 ¹ ECF No. 1-1 at 2.

23 ² *Id.* at 3–9.

24 ³ ECF No. 6.

25 ⁴ ECF No. 7.

26 ⁵ *Id.* at 2. Some of those previous petitions are: (1) case no. 3:01-cv-00525-DWH-RAM; (2)
27 2:13-cv-02195-GMN-VCF; and (3) 2:10-cv-00295-JCM-PAL.

28 ⁶ 28 U.S.C. § 2244(3)(A).

1 second or successive.⁷ At least one of Gallimort's previous petitions was denied on its merits,
2 and that ruling was affirmed by the Ninth Circuit.⁸ This petition is therefore successive, and
3 Gallimort has not shown or otherwise indicated that he has authority from the Ninth Circuit to
4 pursue it.

5 Accordingly, the **Clerk of Court** is directed to **DETACH and FILE the petition [ECF**
6 **No. 1-1]**. IT IS HEREBY ORDERED that the petition is **DISMISSED** as successive. And
7 because reasonable jurists would not find my decision to dismiss this unauthorized, successive
8 petition to be debatable or wrong, I decline to issue a certificate of appealability.

9 IT IS FURTHER ORDERED that Gallimort's motion for appointment of counsel [ECF
10 **No. 2]** is **DENIED as moot**.

11 The **Clerk of Court** is directed to **ENTER JUDGMENT** accordingly and **CLOSE**
12 **THIS CASE**.

13 Dated: July 23, 2018

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15 U.S. District Judge Jennifer A. Dorsey
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26 ⁷ *McNabb v. Yates*, 576 F.3d 1028, 1029–30 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d
27 1049, 1053 (9th Cir. 2005).

28 ⁸ See ECF Nos. 34, 35, 46, 47 in 3:01-cv-00525-DWH-RAM.